

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

RAFEL FONTANEZ,	)	
Petitioner	)	
	)	
v.	)	CIVIL ACTION NO. 04-30007-MAP
	)	
UNITED STATES OF AMERICA,	)	
Respondent	)	

MEMORANDUM AND ORDER REGARDING PETITIONER'S  
MOTION, AND AMENDED MOTION,  
FOR CERTIFICATE OF APPEALABILITY  
(Docket No. 18)

August 20, 2004

PONSOR, D.J.

On June 18, 2004 this court denied the petitioner's motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Petitioner has now filed a Motion for a Certificate of Appealability with regard to this ruling. In addition, the court has allowed the petitioner's motion for leave to amend his motion, in order to include claims under the Supreme Court's recently Blakely decision.

With regard to the petitioner's original motion, as the June 18 memorandum indicates, there simply has not been any substantial showing of a denial of a Constitutional right. No evidence suggests that the petitioner's attorney was in any way ineffective during the course of the trial. With regard to the amended motion, the Supreme Court has indicated explicitly that Blakely does not address the United States Sentencing Guidelines. Moreover, it seems unlikely that, even if Blakely has some impact on the Sentencing Guidelines, the decision will be deemed to be retroactive to cases such as this one, in which collateral relief

is sought.

Since the petitioner has not raised issues which are debatable among jurists of reason in the sense that some other court could resolve the issues in a manner different from the way the court did on June 18, 2004, and since Blakely offers petitioner no assistance, the Motion for Certificate of Appealability is hereby DENIED. This case can now be closed.

It is So Ordered.

/s/ Michael A. Ponsor  
MICHAEL A. PONSOR  
United States District Judge